

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

TOTAL QUALITY LOGISTICS, LLC,	:	
	:	NO. 1:12-CV-00620
Plaintiff,	:	
	:	
	:	
v.	:	<b>OPINION &amp; ORDER</b>
	:	
	:	
MACKTOON, INC. d/b/a Arrow	:	
Transportation	:	
	:	
Defendant.	:	

This matter is before the Court on Defendant's Motion to Dismiss or, in the Alternative, to Stay Proceedings Pending Arbitration (doc. 5) and Plaintiff's response in opposition thereto (doc. 7).

In brief, this matter arises out of a dispute regarding the transportation of bread products that were required to be kept at a certain temperature (doc. 2). Plaintiff alleges that Defendant failed to maintain that temperature, thus ruining the cargo (Id.).

Defendant argues that this matter should be dismissed because it should be heard in arbitration pursuant to the contract the parties signed (doc. 5). The undisputed relevant contract language is:

16. DISPUTE RESOLUTION. If a dispute arises between the Parties under this Agreement, as a condition precedent to any other remedy, the Parties agree to:

(a) Meet and confer with each other as soon as possible to reach a voluntary resolution of the dispute.

(b) If such voluntary resolution does not succeed, the Parties agree to submit the dispute to arbitration before a mutually agreed upon arbitrator.

(c) For disputes whose amount in controversy is \$10,000.00 or less, the arbitrator's decision shall be final and binding upon both Parties.

(d) For disputes whose amount in controversy exceeds \$10,000.00 the Parties will seek litigation (doc. 5).

As Plaintiff argues in its response to Defendant's motion, the motion must fail based on the express language of the agreement. In its complaint, Plaintiff alleges an amount in controversy of at least \$41,088.96 (doc. 2). This puts this matter into subcategory (d) of the relevant contract provision, which provides that for "disputes whose amount in controversy exceeds \$10,000.00 the Parties will seek litigation." Thus, pursuant to the contract between the parties, Plaintiff properly sought litigation, and Defendant's motion to dismiss or to stay pending arbitration is not well taken.

Consequently, the motion is DENIED (doc. 5).

SO ORDERED.

Dated: November 1, 2012 /s/ S. Arthur Spiegel

S. Arthur Spiegel

United States Senior District Judge